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August 9, 2004

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Verizon's Petition for a Declaratory Ruling or, Alternatively, Interim Waiver and Verizon's Conditional Petition for Forbearance with Regard to Broadband Services Provided via Fiber to the Premises* WC Docket No. 04-242

Dear Ms. Dortch:

On August 16, 2004, one week from today, Verizon will begin offering groundbreaking high-speed broadband services over Verizon's fiber-to-the-premises (FTTP) network in Keller, Texas to the general public. This next-generation network will be capable of providing voice, data and video to customers. The new FTTP broadband access service will offer network speeds up to 10 times faster than current generation DSL or cable modem service. It will bring added competition to both the broadband market and ultimately to cable companies' core video market as well.

As the Commission is aware, on June 28, 2004, Verizon filed a *Petition for Declaratory Ruling or, Alternatively, for Interim Waiver With Regard to Broadband Services Provided Via Fiber To The Premises* and a *Conditional Petition of Verizon For Forbearance Under 47 U.S.C. §160(c) With Regard to Broadband Services provided Via Fiber To The Premises*.¹ In the Verizon Petitions, Verizon explained that the

¹ *Petition of Verizon for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-

Commission has not yet specifically addressed the appropriate regulatory treatment for broadband services offered via FTTP, but that it has on one prior occasion addressed the appropriate regulatory treatment for broadband services offered by a company that also offers video and voice services over its network. In the *Cable Modem Declaratory Ruling*,² the Commission granted both declaratory relief and a waiver to permit cable modem service to be provided pursuant to individually negotiated terms and without being required to offer it separately under tariff and at cost-based rates, terms and conditions.³ Because Verizon's FTTP broadband access service will be provided under circumstances that parallel those of cable modem service, *i.e.* over a broadband cable network, Verizon believes that its FTTP broadband access service falls under the same determinations and waivers of the *Cable Modem Declaratory Ruling*. Verizon thus believes that its FTTP Internet access service may too be offered on an individually negotiated basis and without being subject to tariffing requirements and has planned to move forward on that basis.

If the Commission disagrees with Verizon that it may offer FTTP Internet access service in the manner set forth above absent further Commission action, Verizon requests Special Temporary Authority (STA) to enable Verizon to offer the FTTP broadband access service to ISPs on a detariffed basis, subject to individually negotiated contracts until the Commission rules on the merits of Verizon's pending petitions. The Commission may grant an STA where the proposed action will serve the public interest, convenience and necessity. The Commission has granted STAs in the past while it considers a request for a broader waiver or where it serves the Commission's goal to foster innovation and speed the delivery of advanced services.⁴ The STA requested is

242, filed June 28, 2004; *Conditional Petition of Verizon for Forbearance under 47 U.S.C. §160(c) with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, filed June 28, 2004 ("Verizon Petitions").

² *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) ("Cable Modem Declaratory Ruling").

³ *Cable Modem Declaratory Ruling* ¶95.

⁴ See, e.g., *Application of GTE Corporation for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, Order, 16 FCC Rcd 11810 (2001) (granting STA to enable Verizon to own advanced services equipment prior to ruling on a broader petition to accelerate the sunset of advanced services separate affiliate requirement in order to deploy fiber to the home technology in new community); *Application of GTE Corporation for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, Order, 16 FCC Rcd 14009 (2001) (granting STA to integrate Verizon's advanced services subsidiary in order to provide resale of DSL service over resold lines in Connecticut prior to sunset of advanced services affiliate requirement in *Bell Atlantic/GTE Merger Order*); Letter from James D. Schlichting,

both narrow and of limited duration. It is narrow because it would apply only to the new high speed data services that Verizon is making available to ISPs over its new FTTP network, and it is of limited duration because it will only govern until the Commission rules on Verizon's Petitions and is without prejudice to any Commission action that may be taken in the future.

In this case, granting the STA will serve the public interest, convenience and necessity. First, Verizon's FTTP broadband access service will be a new offering that will bring the next generation of networks to the public. This should benefit consumers by adding a new level, speeding the delivery of and expanding competition for advanced services. Second, since the Commission has not yet determined the regulatory treatment for FTTP nor ruled on Verizon's Petitions, granting the STA will enable Verizon to offer the FTTP broadband access service to the public as planned without prejudicing or prejudging the outcome of those proceedings. In contrast, subjecting these services now to tariffing and related requirements would effectively prejudice the issues under consideration there. Finally, Verizon has already committed to negotiating contracts with ISPs to provide FTTP broadband access service and have notified ISPs of its upcoming availability. Granting the STA will also enable Verizon and ISPs to gain experience with the provisioning of these new services under market-based terms and conditions.

Should the Commission conclude that a tariff is necessary but decline to grant an STA for any reason, then Verizon respectfully requests that the Commission inform Verizon of that determination promptly so that it may take such steps as are necessary to avoid delaying the initiation of service to consumers. As Verizon's broadband access service will be available to customers in just one week, Verizon requests that the Commission inform Verizon of the need for a tariff by 3:00 p.m. Friday, August 13, 2004.

Sincerely,



cc: J. Carlisle
M. Carey
T. Navin
P. Arluk
J. Marcus
M. Maher

Chief, Policy & Program Planning Division, Common Carrier Bureau, FCC to Marie Breslin, Director FCC Relations, Bell Atlantic Network Services, Inc., W-P-C 6834 (rel. September 27, 1994) (granting STA to extend by six months video dialtone technical trial).